

cr
SZ

Claim 38. (New) A method according to claim 36 wherein said biopolymer comprises collagen.

Claim 39. (New) A method according to claim 36 wherein said binder comprises collagen.

REMARKS

Claims 19, 20 and 24-39 are in the Application. Claims 26-39 are newly presented.

Claims 26-39 are directed to the composition and method of use thereof for bone repair comprising a matrix in which a mineral is rendered immobile within the matrix by being mixed with a binder. This embodiment is supported at page 7, lines 8-10.

The newly-presented claims are distinguishable from *Rhee et al.*, U.S. Pat. No. 5,264,214 in that *Rhee* does not disclose a composition that contains a binder and therefore the mineral, if present, is not immobilized within the matrix. In *Rhee* at column 12, lines 16-20, it is stated that particulate materials such as hydroxyapatite/tricalcium phosphate particles may be added to the collagen reaction mixture to provide a bulkier implant. However, the "collagen reaction mixture" is collagen with the polyethylene glycol cross-linking agent, mPEG or dPEG. *Rhee* performs a cross-linking reaction in the presence of mineral particles. However, according to the presently-claimed embodiment, the particles and binder are mixed together with the collagen fibers, then dried so that the dried binder immobilizes the particles within the matrix. The binder is then cross-linked to render it insoluble. This is substantially a different product from that disclosed in the passage cited in *Rhee*.

Accordingly, it is respectfully requested that *Rhee* not be applied against the claims and that this application be passed to issuance.

Respectfully submitted,
BEYER WEAVER & THOMAS, LLP

Date: July 15, 2003


Reginald J. Suyat
Reg. No. 28,172

P.O. Box 778
Berkeley, CA 94704-0778